

Message Text

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ACTION EUR-12

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E.O. 11652: NA

TAGS: PGOV, PINT, WB, GW

SUBJECT: BERLIN ELECTIONS RULED INVALID IN TWO DISTRICTS

1. BERLIN ELECTORAL COURT, FROM WHICH THERE IS NO APPEAL, RULED NOV 12 THAT MARCH 2 ELECTIONS FOR HOUSE OF REPRESENTATIVES IN TWO OF THREE ZEHLENDORF ELECTORAL DISTRICTS WERE INVALID BECAUSE CANDIDATES FROM CITIZENS GROUP WUB (ELECTORAL SOCIETY OF INDEPENDENT CITIZENS) HAD BEEN BARRED FROM PARTICIPATING. UNDER ARTICLE 26 OF BERLIN CONSTITUTION, ONLY ORGANIZED POLITICAL PARTIES COULD PARTICIPATE IN ELECTIONS FOR ZEHLENDORF DISTRICT COUNCIL, HOWEVER.

2. AS RESULT ELECTORAL COURT DECISION, SIX MEMBERS OF HOUSE OF REPS HAD MANDATES WITHDRAWN AS OF NOV 12. THEY WERE: HEINRICH LUMMER, CDU (CAUCUS CHAIRMAN); HENNING LEMMER, CDU; GERO PFENNIG, CDU; HANS-JUERGEN HESS, SPD; DIETRICH SCHAEFFER, SPD; AND GERHARD EMIG, FDP.

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SALARIES OF THESE MEMBERS HAVE BEEN TERMINATED

(ALTHOUGH THEY ARE NOT REQUIRED TO PAY BACK MONEY RECEIVED SINCE CONSTITUTION OF HOUSE OF REPS IN APRIL) AND THEY ARE NO LONGER ABLE TO PERFORM ANY FORMAL PARLIAMENTARY ACTIVITIES, INCLUDING ATTENDING COMMITTEE MEETINGS. DEPUTY CDU CAUCUS CHAIRMAN KARL-HEINZ SCHMITZ WILL HANDLE ALL FORMAL MATTERS FOR CDU IN HOUSE OF REPS, ALTHOUGH LUMMER IS EXPECTED TO CONTINUE TO WORK BEHIND SCENES TO EXTENT POSSIBLE. (AT MEETING WITH ALLIED LIAISON OFFICERS NOV 14, CHANCELLERY CHIEF HERZ SAID LUMMER HAD ASKED HIM WHETHER ALLIES PLANNED TO OPPOSE ELECTORAL COURT DECISION.)

3. NEW ELECTIONS CANNOT BE HELD BEFORE MID-JANUARY (LIKELY DATES JAN 18 OR 25) BECAUSE BERLIN CONSTITUTION MAY HAVE TO BE AMENDED TO ELIMINATE PARTY MONOPOLY ON NOMINATIONS. (BASIS FOR THIS MONOPOLY IN BERLIN CONSTITUTION STEMS FROM EARLY POST-WAR YEARS WHEN IT WAS FEARED THAT VARIOUS COMMUNIST-CONTROLLED ORGANIZATIONS WOULD FORM VOTER ORGANIZATIONS AND TRY TO ELECT CANDIDATES WHO WOULD SUPPORT SED.) IT IS ANTICIPATED THAT ALL SIX MEMBERS OF HOUSE WILL BE REELECTED. HOWEVER, IT IS REMOTELY POSSIBLE THAT CDU'S PFENNIG AND FDP'S EMIG (WHO HAS HAD ONE PROBLEM AFTER ANOTHER IN RECENT MONTHS) COULD LOSE THEIR SEATS IF WUB CANDIDATES IN TWO DISTRICTS CONCERNED POLL AS MANY VOTES AS IN MARCH 2 DISTRICT COUNCIL ELECTIONS. HOWEVER, ISSUE AT THAT TIME WAS OPPOSITION TO TUNNEL PROJECT WHICH SUBSEQUENTLY WAS WITHDRAWN. SHOULD FDP AND CDU LOSE ONE SEAT EACH IN ZEHLENDORF, UNDER TERMS OF BERLIN'S COMPLICATED ELECTORAL SYSTEM, PARTIES WOULD GAIN ONE SEAT EACH IN NEUKOELLN AND WILMERSDORF RESPECTIVELY. THAT WOULD NOT DO PFENNIG OR EMIG ANY GOOD PERSONALLY, HOWEVER, BECAUSE NEW MEMBERS WOULD HAVE TO BE DRAWN FROM PARTY LISTS IN THOSE DISTRICTS.

4. LOSS OF THREE SEATS BY CDU HAS COST THAT PARTY ITS POSITION AS STRONGEST PARTY IN HOUSE OF REPS (BOTH CDU AND SPD NOW HAVE 65 EACH). THIS IS NOT EXPECTED TO AFFECT POSITION OF PETER LORENZ AS PRESIDENT SINCE HE WAS ELECTED IN APRIL FOR DURATION OF TERM OF PARLIAMENT LIMITED OFFICIAL USE

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BY THEN LEGALLY CONSTITUTED HOUSE OF REPS. COUNCIL OF ELDERS (HOUSE STERRING COMMITTEE) WILL MEET NOV 17 TO CONSIDER ADMINISTRATIVE AND LEGAL IMPLICATIONS OF ELECTORAL COURT RULING.

5. COMMENT OF GOVMAYOR SCHUETZ, PRESIDENT LORENZ AND OTHERS HAS BEEN THAT DECISION OF COURT WHILE SURPRISING MUST BE CARRIED OUT. SPANDAUER VOLKSBLATT, HOWEVER,

WHICH SUPPORTS SPD, NOTED IN NOVEMBER 14 EDITORIAL THAT DECISION OF COURT WAS BASED ON FRG CONSTITUTIONAL PROVISION AND SUGGESTED THAT SINCE BERLIN NOT GOVERNED BY BONN, ALLIES SHOULD OVERTURN ELECTORAL COURT DECISION AND LEAVE BERLIN CONSTITUTION AS IS, WITH POLITICAL PARTY MONOPOLY ON NOMINATIONS FOR HOUSE ELECTIONS. BEYOND PRACTICAL UNDESIRABILITY OF INTRUDING OURSELVES INTO LOCAL POLITICAL CONTROVERSY, HOWEVER, IT APPEARS TO US THAT ELECTORAL COURT ACTED WELL WITHIN PREROGATIVES OF BERLIN JUDICIARY. ARTICLE 87 OF BERLIN CONSTITUTION PROVIDES THAT "BASIC LAW (FRG CONSTITUTION) PROVISIONS ARE EFFECTIVE IN BERLIN ALSO. THEY OVERRIDE THE PROVISIONS OF THE CONSTITUTION." ALLIES, IN MAKING RESERVATIONS TO BERLIN CONSTITUTION BY MEANS OF BK/O(50)75, STATED THAT "THE PROVISIONS OF THIS ARTICLE CONCERNING THE BASIC LAW WILL APPLY ONLY TO THE EXTENT NECESSARY TO PREVENT A CONFLICT BETWEEN THIS LAW AND THE BERLIN CONSTITUTION." ELECTORAL COURT WOULD SEEM FULLY JUSTIFIED, THEREFORE, IN STRIKING DOWN PART OF BERLIN CONSTITUTION IT CONSIDERED IN CONFLICT WITH BASIC LAW. IT IS OF COURSE POSSIBLE THAT SOVIETS WILL CHOOSE NOT TO SEE IT THIS WAY, BUT IF THEY COME IN WE WOULD INTEND TO TELL THEM THAT WHAT HAS HAPPENED IS CONSISTENT WITH WHAT ALLIES HAVE AUTHORIZED FOR QUARTER-CENTURY.

GEORGE

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